
REPORT 8
(1215/52 IM)

SKYLINE – 1 UPLAND ROAD, KELBURN

1. Purpose of Report

To consider the issues associated with the Skyline restaurant site and adjoining car park land and make a decision on whether to consult on changing the legal status of the land.

2. Executive Summary

Council owns the land at 1 Upland Road, Kelburn known as the Skyline site. The majority of the site is occupied by the Skyline building and the carpark. The site is subject to a ground lease which expires in 2044.

The land was vested in the Council when the Botanic Gardens were vested in the Council in 1891. It is also a reserve under the Reserves Act 1977.

The land has had various buildings on it since 1905. Businesses occupying the site have tended not to be successful. This can be partly attributed to the legislative constraints that apply to the site, and more recently the specific configuration and nature of the Skyline building.

The ground lease and the building have recently been purchased by Panorama Ltd. Prior to proceeding with that transaction Panorama sought a contractual commitment from officers that they would recommend the revocation of the Reserves Act status to Council and would explore removing the site from the Wellington Botanic Garden Vesting Act 1891 (WBGVA) legislation.

In order to consider this issue the Council needs to consider the options for the legal status of the site, and the consequences of each given the current ground lease terms and building on the site. These include:

1. Maintain status quo (WBGVA remains unaltered);
2. Review the legislative framework and pursue an outcome that enables the site to be used and managed in a sustainable way ; or

3. Remove the current legislative constraints and control the site through the lease and the District Plan only.

3. Recommendations

Officers recommend that the Committee:

1. *Receive the information.*
2. *Recommend to the Council that it agrees to notify the proposal to revoke the reserve status of all that land held in Certificate of Title WN25B/56 pursuant to section 24 of the Reserves Act 1977.*
3. *Note that the process for the proposal to revoke the reserve status is as follows:*
 - a. *The proposal will be publically notified and a period of one month allowed for objections*
 - b. *If objections are received, oral hearings will be scheduled*
 - c. *The Strategy and Policy Committee will consider the proposal, objections and oral hearings and make a recommendation to Council on whether to proceed with the proposal*
 - d. *Council will make a decision on whether to proceed, and refer the matter to the Minister of Conservation for decision (if required).*
4. *Agree that officers engage in wider consultation, including Parliament and the general public, regarding the potential to remove the Skyline and adjoining car park area from the restrictions of the Wellington Botanic Garden Vesting Act 1891.*

4. Background

4.1 History

The land is held in fee simple title CT WN25B/56 and is shown in appendix A. The majority of this title is occupied by the Skyline building and adjoining car park (Skyline). The land was vested in the Council when the Botanic Gardens were vested in the Council in 1891. In 1995, the site was classified as a local purpose reserve (public gardens) under the Reserves Act 1977.

There has been a building on part of the site since 1904. In that time the property has seen a variety of uses including bar, restaurant, office accommodation and function centre.

In 1984 the current building, known as the Skyline restaurant, was constructed. Owners of the building have struggled to operate a viable business on the site and consequently the Skyline building has fallen into disrepair.

In mid 2010, Skyline Ltd, the former building owner and lessee closed the Skyline restaurant.

The site is adjacent to the Cable Car precinct (which includes the Cable Car Museum, Botanic Garden, and Carter Observatory). However, the building plays a limited role in this valuable tourist area. It is generally agreed that the building design and layout is flawed and not suitable for the site and a significant change is needed for the site to be successful and for it to contribute positively to this key area of the City. A reconfigured building with more obvious links to the Botanic Garden and surrounding activities would better serve the city and its visitors.

4.2 Panorama Ltd

In January 2011 Skyline Ltd sold the premises, and the benefit of the unexpired lease term, to Panorama Ltd (Director, Martin Shelton).

Relevant details of the ground lease are:

- It has been legally assigned to Panorama and cannot be unilaterally altered by the Council.
- There is a tenant option to renew in 2024, and if that is exercised, the lease will remain in place until 2044.
- It restricts the activities on the site to “...a licensed restaurant and function centre, BYO restaurant and/or café” but also allows the building and land to be used for any use for which valid resource consent is granted.
- At the expiry of the lease term (or earlier termination) the building and its associated maintenance liabilities revert to the Council.

Prior to purchasing the balance of the ground lease and the building from Skyline Ltd, Panorama Ltd engaged with the Council as landowner on its potential plans for the building and site.

Panorama identified in these discussions that the legislative constraints applying to the site have a significant impact on its viability. In particular, at the time, Panorama was of the view that to achieve a use consistent with the tourist precinct (at a minimum) the reserves status would need to be uplifted. In addition Panorama was of the view that the site needed to be freed from the restrictions of the WBGVA.

Therefore it was agreed as follows:

“... officers will recommend to Councillors that the Council will publicly notify, if required, a proposed revocation of reserve status with a view to reporting back to the Council regarding the proposed revocation and any objections received.

The Council is entitled to make its decision in its sole and unfettered discretion.

The parties acknowledge that the ultimate decision whether or not to revoke the reserves status rests with the Minister of Conservation.”

“... officers will engage in consultation with Councillors recommending wider consultation, if required, including Parliament and the general public regarding the potential to remove the Skyline and adjoining car park land from the restrictions of the Wellington Botanic Gardens Vesting Act.”

This report, and accompanying recommendations, satisfies the contractual commitment made to Panorama Ltd.

5. Legal Framework

5.1 Botanic Garden legislation

The historical legislation relating to the land is complex. In summary:

- The land is the subject to the Wellington Botanic Garden Vesting Act 1891 (WBGVA) which vested the Botanic Garden in the Council (and also repealed the original 1869 legislation that created the Botanic Garden).
- The WBGVA provides that the land is to be held and used ‘as a place of public recreation and enjoyment for the inhabitants of the City of Wellington’.
- Leasing is permitted provided it is consistent with the purpose above.

5.2 Reserves Act 1977

In addition to the above controls, the more recent (1995) Reserves Act 1977 (RA) classification has added a layer of restriction and control over the use of the site than what applies under the WBGVA. These additional restrictions apply to the leasing provisions, which will impact on any new or varied lease on the site.

At the time of Panorama Ltd purchasing the ground lease and building it was seeking to use the building for a gallery, museum, exhibition centre or other similar activity. At that time both parties were of the view that the Minister of Conservation would not permit these uses under the RA. Therefore the parties agreed to recommend to Council to revoke the RA status.

Since then, officers have obtained advice that indicates that this range of activities may be permitted under the existing classification and revocation may be unnecessary. However, Panorama Ltd has now indicated that this range of activities would not generate the required return needed to justify further investment in the property.

5.3 District Plan

Under the 1985 District Scheme, the land was zoned as a “Tourist A – Skyline Special Development Zone”. This zone was designed to cater for tourist facilities, including a café and retailing destination, but also recognised the openness of the site and important harbour views.

This special zoning was removed in 1994 and the zoning changed to Outer Residential Area under the then Proposed District Plan. This change of zone was to reduce planning complexities around multiple zoning categories and rules, rather than as an indication of the city’s desire to transform this into a residential area.

Any development of the site will be assessed as a non-residential activity, although continuation of current uses will be allowed to the extent authorised by existing use rights.

6. Reserve Revocation

If Council decides in principle to revoke the RA status this process is set out in section 24 of the RA and includes public notification and consideration of submissions.

There has been a building and carpark situated on this site for over 100 years. Despite this, adverse submissions are likely given public concern about the reduced protection for the site and implications of a wider range of new activities.

7. Options for the Future of the WBGVA

Legal advice is that the WBGVA restricts the use of the site. Panorama Ltd has requested that the Council investigates the removal of the site from the WBGVA, so that the use of the site will no longer be subject to the purpose and use in the WBGVA.

If Council agrees to pursue removing the site from its legislative constraints, extensive public consultation and a local bill will be required.

A summary of potential outcomes include:

1 – Status Quo (legislative framework remains unchanged)

Our legal advice is that activities that would compliment the precinct which could be allowed under the current legislative framework include café, gallery space, and museum space.

However, it is clear that a number of activities that may be viable on the site, would either not be allowed (or be subject to challenge) for not meeting the 'permitted use' under the WBGVA.

While it is possible the current tenant could make a success of the site in its current configuration and within the current legislative framework, recent history indicates that it is unlikely. Therefore, the risk under this option is that the tenant is unable to establish a viable business for the site and the site does not contribute to the precinct activity.

In the event the tenant defaults, or hands back the lease, Council would be left with a vacant building which has no obvious use.

2 –Legislative framework is amended or repealed, but replaced with a site specific framework

This could be achieved by one, or any combination, of the following:

- The existing legislation is amended to allow a wider, specific, range of uses (eg Winter Showgrounds arrangement) for this site, and / or
- Amend the WBGVA so it no longer applies to this site and replace it with a specific policy relating to this site which limits permitted uses and acceptable lease conditions, and / or
- Repeal legislation and replace with an encumbrance on the title which states permitted uses and acceptable lease terms and conditions, and/or
- Develop site specific District Plan controls (likely to be in combination with any of the above).

3 – All legislative constraints are removed

Removing all legislative constraints would leave Council with the lease and District Plan as the only methods of control over the site.

It is officers' view that a combination of the District Plan rules and current lease provisions is unlikely to satisfactorily protect this site due to its significant position and relevance to the Botanic Garden and Cable Car precinct.

8. Conclusion

Given the restrictions on the Skyline site and agreements reached in securing the current tenant this report recommends that the Council considers revoking

the site's reserve status and engages in consultation regarding the potential to remove the site from the WBGVA.

Contact Officer: *Tracy Morrah, Principal Property Advisor*

Supporting Information

1) Strategic Fit / Strategic Outcome

Agreement to the proposed course of action will contribute to Council meeting the city's economic objectives.

2) LTCCP/Annual Plan reference and long term financial impact

The project seeks to enhance the City's investment in this site with minimal financial investment by Council.

3) Treaty of Waitangi considerations

The proposed course of action is consistent with the existing leases.

4) Decision-Making

The report is a preliminary paper. Should Council wish to proceed with the reserves revocation and / or the local bill then a full assessment of the decision-making steps and requirements will be made.

5) Consultation

This report recommends that wider public consultation is initiated. Should Council wish to proceed with the reserves revocation and / or the local bill then targeted consultation will be initiated with the port Nicholson Block Settlement Trust, Friends of the Botanic Gardens, the Greater Kelburn Progressive Association, and the precinct interest groups (including Wellington Museums Trust and Wellington Cable Car Ltd).

6) Legal Implications

Extensive legal advice has been sought in relating to this site over the years. Council's lawyers have been consulted during the discussions with Panorama Ltd.

7) Consistency with existing policy

The Botanic Garden Management Plan does not specify a particular use for the site.

Appendix A – Title Boundaries

